UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,162	12/31/2003	Misao Shiina	Q79094	6962

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ART UNIT	PAPER NUMBER
2153	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/748,162	SHIINA, MISAO
	Examiner	Art Unit	
	LASHANYA R. NASH	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 December 2003*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date *1/24/08, 1/10/06, 12/31/03*.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

This Office action is in response to the papers filed 31 December 2003. Claims 1-19 are

presented for further consideration.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which

papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statement filed 10 January 2006 fails to comply with the

provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a written English language

translation of a non-English language document, or portion thereof has not been

provided. It has been placed in the application file, but the information referred to therein

has not been considered as to the merits.

Specification

Examiner notes that Applicant's specification includes a section with an improper

heading "Brief Description of the Invention" (see Specification, page 1). The following

guidelines illustrate the preferred layout for the specification of a utility application.

These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
(1) Field of the Invention.
(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a program itself, without a machine programmed to operate in accordance with the program nor a manufacture structurally and functionally interconnected with the program in a manner

which enables the program to act as a computer component and realize the

functionality. Therefore the aforementioned claims are considered software per se, and

fail to fall within a statutory category of invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by

Garcia-Luna-Aceves et al (US Patent Application Publication 2003/0101278),

hereinafter referred to as Garcia-Luna-Aceves, as set forth below in the Office

action.

In reference to claim 1, Garcia-Luna-Aceves discloses a router employed for

directing clients to optimal servers in computer networks (abstract). Garcia-Luna-

Aceves further discloses:

- An IP router (i.e. web router; Figure 2-item 202; paragraph [0072], lines 1-
  6) including an IP(Internet Protocol) routing table which stores routing
  information (paragraph [0050], lines 1-17; paragraph [0075], lines 4-18) for
  connecting a plurality of client devices (i.e. client; Figure 2-item 110) with

an original server (i.e. content server; Figure 2-item 210) which is at least

an origin of supplying a content and with a plurality of mirror servers (i.e.

web caches; Figure 2-item 208) into which the content supplied from the

original server is copied (i.e. content at content server is replicated at web

caches; paragraph [0068], lines 1-7; paragraph [0079], lines 11-17), the IP

router comprising:

- means for ending a connection relating to a packet output from a specific

  port of the client device and obtaining request information of a content

  requested by the client device (i.e. router receives request packets from

  clients for forwarding; paragraph [0006], lines 1-12;paragraph [0082], lines

  1-13);

- means for selecting an optimum server for the request information (i.e.

  optimal server selected; paragraph [0069], lines 1-6) based on

  information which is to be an index for selecting an optimum server (i.e.

  metrics associated with route mappings; paragraph [0048], lines 1-5;

  paragraph [0052], lines 1-8; paragraph [0073], lines 8-18) if the obtained

  request information corresponds to the plurality of mirror servers (i.e.

  requested URL for content supplied by web caches and content server;

  paragraph [0086], lines 1-6 or client serviced by web caches and content

  server; paragraph [0087], lines 1-8) and based on the routing information

  (i.e. paragraph [0073], lines 13-18;)

- means for obtaining the content by connecting with the optimum server selected and means for transferring the obtained content to the client device (paragraph [0086], lines 1-15; paragraph [0088], lines 1-19).

In reference to claim 7, Garcia-Luna-Aceves discloses a router employed for directing clients to optimal servers in computer networks (abstract). Garcia-Luna-Aceves further discloses:

- A communication system (Figure 2) comprising:

- a plurality of client devices (i.e. client; Figure 2-item 110; paragraph [0078], lines 10-19);

- an original server (i.e. content server; Figure 2-item 210) which at least serves as an origin of supplying a content (paragraph [0079], lines 11-15);

- a plurality of mirror servers (i.e. web caches; Figure 2-item 208) which copy and hold the content supplied from the original server (i.e. content at content server is replicated at web caches; paragraph [0068], lines 1-7; paragraph [0079], lines 16-17); and

- an IP(Internet Protocol) router (i.e. web router; Figure 2-item 202) for connecting the plurality of client devices with the original server and the plurality of mirror servers over a network; (paragraph [0072], lines 1-6):

- wherein the IP router includes an IP(Internet Protocol) routing table for storing routing information (paragraph [0050], lines 1-17; paragraph [0075], lines 4-18), and comprises:

- means for ending a connection relating to a packet output from a specific

  port of the client device and obtaining request information of a content

  requested by the client device (i.e. router receives request packets from

  clients for forwarding; paragraph [0006], lines 1-12;paragraph [0082], lines

  1-13);

- means for selecting an optimum server for the request information (i.e.

  optimal server selected; paragraph [0069], lines 1-6) based on

  information which is to be an index for selecting an optimum server (i.e.

  metrics associated with route mappings; paragraph [0048], lines 1-5;

  paragraph [0052], lines 1-8; paragraph [0073], lines 8-18) if the obtained

  request information corresponds to the plurality of mirror servers (i.e.

  requested URL for content supplied by web caches and content server;

  paragraph [0086], lines 1-6 or client serviced by web caches and content

  server; paragraph [0087], lines 1-8) and based on the routing information

  (i.e. paragraph [0073], lines 13-18;)

- means for obtaining the content by connecting with the optimum server

  selected (paragraph [0086], lines 1-15; paragraph [0088], lines 1-19).

In reference to claims 13 and 18, Garcia-Luna-Aceves discloses a method [claim

13] (paragraph [0069], lines 1-3) and associated computer software [claim 18]

(paragraph [0047], lines 9-10) employed for directing clients to optimal servers in

computer networks (abstract). Garcia-Luna-Aceves further discloses:

- A band setting method of an IP router (i.e. web router; Figure 2-item 202)
  for setting a band (paragraph [0072], lines 1-6' paragraph [0073], lines 1-
  13) when connecting a plurality of client devices (i.e. client; Figure 2-item
  110) with an original server (i.e. content server; Figure 2-item 210) which
  is at least an origin of supplying a content and with a plurality of mirror
  servers (i.e. web caches; Figure 2-item 208) into which the content
  supplied from the original server is copied (i.e. content at content server is
  replicated at web caches; paragraph [0068], lines 1-7; paragraph [0079],
  lines 11-17), the IP router comprising:

- ending a connection relating to a packet output from a specific port of the
  client device and obtaining request information of a content requested by
  the client device (i.e. router receives request packets from clients for
  forwarding; paragraph [0006], lines 1-12;paragraph [0082], lines 1-13);

- selecting an optimum server for the request information (i.e. optimal
  server selected; paragraph [0069], lines 1-6) based on information which
  is to be an index for selecting an optimum server (i.e. metrics associated
  with route mappings; paragraph [0048], lines 1-5; paragraph [0052], lines
  1-8; paragraph [0073], lines 8-18) if the obtained request information
  corresponds to the plurality of mirror servers (i.e. requested URL for
  content supplied by web caches and content server; paragraph [0086],
  lines 1-6 or client serviced by web caches and content server; paragraph

[0087], lines 1-8) and based on the routing information (i.e. paragraph

[0073], lines 13-18;)

- obtaining the content by connecting with the optimum server selected and

  transferring the obtained content to the client device (paragraph [0086],

  lines 1-15; paragraph [0088], lines 1-19);

- detecting, from a change in the contents of the IP routing table, that a

  network topology has been changed (paragraph [0073], lines 13-18);

- altering a selection criteria of the optimum server (i.e. updating tables)

  based on a result of detecting that the network topology has been

  changed (paragraph [0049], lines 1-12; paragraph [0053], lines 1-9); and

- altering a band setting (i.e. bandwidth; paragraph [0073], lines 8-13) for

  each service class according to a traffic change accompanying an

  alteration of the selection criteria (paragraph [0076], lines 1-9).

In reference to claims 2 and 19, Garcia-Luna-Aceves discloses a means for detecting,

from a change in the contents of the IP routing table, that a network topology has been

changed (paragraph [0073], lines 13-18); a means for altering a selection criteria of the

optimum server (i.e. updating tables) based on a result of detecting that the network

topology has been changed (paragraph [0049], lines 1-12; paragraph [0053], lines 1-9);

and a means for altering a band setting (i.e. bandwidth; paragraph [0073], lines 8-13) for

each service class according to a traffic change accompanying an alteration of the

selection criteria (paragraph [0076], lines 1-9).

In reference to claims 3, 9 and 14 Garcia-Luna-Aceves discloses wherein the

information to be an index for selecting the optimum server is at least one of:

information for driving/stopping state per server, RTT(Round-Trip Time) information, or

throughput information (paragraph [0073], lines 8-18).

In reference to claims 4, 10, and 15 Garcia-Luna-Aceves discloses wherein the means

for selecting an optimum server selects the optimum server by additionally considering

a past access track record (paragraph [0086], lines 1-15).

In reference to claims 5, 11 and 12 Garcia-Luna-Aceves discloses wherein a health

check for obtaining information (i.e. validity), per server, which is to be an index for

selecting the optimum server is performed when a change in contents of the IP routing

table is recognized (paragraph [0129], lines 1-6).

In reference to claims 6, 12, and 17 Garcia-Luna-Aceves discloses means for

monitoring a changing situation of the traffic for a predetermined certain period of time

(paragraph [0039], lines 5-11), wherein the means for altering the band setting alters the

band setting for each service class by using a result of monitoring the changing situation

of the traffic, performed by the means, as a trigger (paragraph [0073], lines 8-18).

In reference to claim 8, Garcia-Luna-Aceves discloses a means for transferring the

obtained content to the client device (paragraph [0086], lines 1-15; paragraph [0088],

lines 1-19); a means for detecting, from a change in the contents of the IP routing table,

that a network topology has been changed (paragraph [0073], lines 13-18); altering a

selection criteria of the optimum server (i.e. updating tables) based on a result of

detecting that the network topology has been changed (paragraph [0049], lines 1-12;

paragraph [0053], lines 1-9); and altering a band setting (i.e. bandwidth; paragraph

[0073], lines 8-13) for each service class according to a traffic change accompanying an

alteration of the selection criteria (paragraph [0076], lines 1-9).

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to LASHANYA R. NASH whose telephone number is

(571)272-3957. The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Glenton Burgess can be reached on (571) 272-3949. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LaShanya R Nash/   /Glenton B. Burgess/
Examiner, Art Unit 2153   Supervisory Patent Examiner, Art
March 20, 2008   Unit 2153